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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re KOBE M. et al., Persons Coming
Under the Juvenile Court Law.

B235530
(Los Angeles County
Super. Ct. No. CK49926)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

RONALD S. et al.,

Defendants and Appellants.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Rudolph Diaz, Judge. Affirmed.

Karen J. Dodd, under appointment by the Court of Appeal, for Defendant and
Appellant Ronald S.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and
Appellant Maria M.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel, Peter Ferrera, Deputy County Counsel, for Plaintiff and Respondent.

Maria M. (Mother) and Ronald S. (Ronald) appeal from jurisdiction and dispositional orders. The dependency court found jurisdiction, but allowed the children to continue living at home. The court further ordered the parents to submit to random drug testing. We affirm.

FACTS

This matter came to the attention of the Department of Children and Family Services (DCFS) in May 2011. F.S. (F.), two years old at the time, is the daughter of Mother and Ronald. Kobe M. (Kobe) and Omarion W. (Omarion), ages nine and eight respectively in May 2011, are the sons of Mother. Mother, Ronald, and the three children lived in Long Beach.

DCFS received a referral that Mother and Ronald were involved in the sale and/or use of drugs. It was reported that a regular flow of people went to their home on a daily basis and that some left under the influence of drugs. The referral stated that a strong odor of marijuana emanated from the home.

DCFS filed a petition pursuant to Welfare and Institutions Code section 300¹ on May 27, 2011. The concurrent detention report stated when the caseworker initially interviewed Mother and Ronald in their home, no smell of marijuana was detected, although both Mother and Ronald admitted to occasional marijuana use, and both tested positive for marijuana. Mother told the caseworker that she had previously abused crack cocaine but had not used it in many years. Ronald admitted to being on parole for selling drugs. Both Mother and Ronald denied that they had frequent visitors, and both denied that they were currently selling drugs.

All the children appeared healthy and well cared for. The two boys were diagnosed with attention deficit hyperactivity disorder (ADHD) and both were receiving therapy and psychiatric services. Therapists for both boys reported that they were doing well in their treatment. However, at the time of the caseworker's May 2011 visit, Mother

¹ Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

was seven months pregnant and had only recently made a doctor's appointment to receive prenatal care. Furthermore, the caseworker's detention report stated that, although the children appeared to be cared for, it was of "huge concern" that the parents minimized the effects of their drug use given Mother's history of addiction and Ronald's criminal history.

Mother had an extensive prior child welfare history. She had five older children for whom she received child welfare services while living in Wisconsin; she failed to reunify with all of them. Two of these older children were born exposed to cocaine. Mother's social worker in Wisconsin alleged that Mother had left the state without completing her case plan.

Previous DCFS proceedings had also been initiated for Kobe and Omarion. In 2002, Mother left Kobe in the care of relatives in Long Beach without a plan for support, and later that year Omarion was born testing positive for cocaine and alcohol. Kobe and Omarion were removed from Mother by DCFS after Omarion's birth, and a DCFS case on the matter remained open through May 2004. Eventually, after receiving services including drug treatment, Mother was able to reunify with Kobe and Omarion. Additionally, in 2007, DCFS received a report that Mother was emotionally and physically abusing the children. While DCFS determined the allegations to be unfounded, Mother tested positive for marijuana during the agency's investigation.

Ronald's criminal history included a 1993 conviction for carrying a concealed weapon and a 2003 conviction for assault with a firearm, and he had been arrested on numerous other occasions. In addition, he was convicted in October 2008 of possession of marijuana for sale and was sentenced to 32 months in prison.

Ronald was found to be F.'s father at the initial petition hearing. Mother stated that she was unaware of the whereabouts of either Kobe's or Omarion's father. After indicating that it was "on the fence over detention" of the children, the dependency court ordered the two older children released to Mother, and F. released to Mother and Ronald.

As reflected in the June 23, 2011 jurisdiction/disposition report, Kobe told the DCFS caseworker that he had plenty of food and clothing and said that he felt safe with

his parents. He stated that he did not know what drugs are, and he denied seeing his parents smoke anything. Omarion likewise stated that he had plenty of food and clothing and that his parents took good care of him. Omarion also stated that he did not know what drugs are and he never saw his parents smoke or drink alcohol.

Mother told the caseworker that she was previously addicted to crack cocaine, but said that she had not used it in the prior 11 years. Mother admitted that she occasionally used marijuana with Ronald—about two times a month for the previous two or three months. Mother was currently attending an outpatient drug program. She denied that she had a drug problem, but stated that she would comply with all court orders and cooperate with DCFS. Mother told the caseworker that the reason she discovered her most recent pregnancy at such a late date was because she continued to have her period during the pregnancy.

Ronald said that he and Mother used marijuana together one or two times a month, but could not afford to pay for it and did not keep it in their home. Ronald denied ever using marijuana in front of the children, and said he and Mother only used it when the children were at a babysitter's or asleep. He further claimed that if he and Mother had known she was pregnant, they would not have used marijuana during her pregnancy. After they discovered she was pregnant, Mother had not used marijuana. Ronald denied that he ever used any drugs other than marijuana, and stated that he never used marijuana in the home. He stated that he did not need to participate in a drug treatment program, but said that he would comply with drug testing and court orders.

The jurisdiction/disposition report recommended that the children remain in the home with Mother and Ronald, as they had provided suitable housing and maintained the boys' ADHD treatment. However, the report noted that Mother and Ronald did not have a clear understanding of the impact the marijuana use could have on the family, particularly given their prior drug histories.

The jurisdiction/disposition hearing began on June 24, 2011. At the time of the hearing, DCFS had received the results of drug tests for Mother, showing that she had tested negative for drugs on her last two tests. Ronald's results were not yet available.

Counsel for both parents made a motion pursuant to section 350, subdivision (c), seeking to dismiss the petition. The court denied the motion, finding that there was a substantial risk to the children as long as Mother and Ronald continued to use marijuana. The court stated that marijuana use rendered parents unable to appropriately care for the welfare of their children because of its intoxicating effects, and posed a risk to children of exposure to marijuana smoke. The court also expressed concern that marijuana use by the parents sets a poor example for their children. Thereafter, the court sustained the dependency petition pursuant to section 300, subdivision (b).² The matter was continued for disposition.

Prior to the continued August 9, 2011 hearing, DCFS submitted drug test results for both Mother and Ronald. Mother had tested negative on four of her drug tests. She had missed one test, claiming that she was too sore to ride the bus after giving birth by Caesarean section. Ronald had taken four drug tests and had tested negative on all of them.

² At the hearing, the following counts were sustained: “b-1: The children Kobe [M.], Omarion [W.], and [F. S.]’s mother, Maria [M.], has a history of illicit drug use including cocaine and is a current user of marijuana, which renders the mother incapable of providing the children with regular care and supervision. On 04/04/2011, the mother had a positive toxicology screen for marijuana. On prior occasions, the mother was under the influence of illicit drugs while the children were in the mother’s care and supervision. The children Kobe and Omarion are prior dependents of the Juvenile Court, due to the mother’s substance abuse. Such substance abuse by the mother endangers the children’s physical health and safety and places the children at risk of physical harm and damage. [¶] “b-2: The children Kobe [M.], Omarion [W.], and [F. S.]’s mother, Maria [M.]’s male companion, Ronald [S.], father of the child [F.], has a history of illicit drug use and is a current user of marijuana, which renders [Ronald] incapable of providing the children with regular care and supervision. On 04/04/2011, [Ronald] had a positive toxicology screen for marijuana. On prior occasions, [Ronald] was under the influence of illicit drugs while the children were in [Ronald]’s care and supervision. The mother knew of [Ronald]’s substance abuse and failed to take action to protect the children. Such illicit drug use by [Ronald] and the mother’s failure to protect the children endangers the children’s physical health and safety and places the children at risk of physical harm, damage and failure to protect.”

At the continued hearing, further counts relating to the fathers of Kobe and Omarion were sustained. The dependency court then heard argument regarding disposition. Counsel for Mother and Ronald contended that continued jurisdiction was unwarranted, and counsel for the children agreed. The court, however, ultimately determined that continued jurisdiction was necessary. The court was concerned that Mother and Ronald were taking the matter “a little bit too lightly,” and found that it was in the interests of the children to maintain jurisdiction to see if Ronald and Mother could continue to refrain from using marijuana. The children were to remain placed with Mother and Ronald, who were to continue to submit to random drug testing.

DISCUSSION

Both Mother and Ronald appeal from the dependency court’s orders finding jurisdiction pursuant to section 300, subdivision (b), and adjudging the children dependents of the court.

We review the dependency court’s jurisdiction and dispositional orders for substantial evidence. “In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact.” (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) All conflicts are resolved and all legitimate inferences are drawn in favor of the dependency court’s order. (*Ibid.*) “[W]e review the record in the light most favorable to the court’s determinations.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) We do not reweigh the dependency court’s determinations of fact or credibility. (*Ibid.*)

Pursuant to section 300, subdivision (b), a dependency court may determine a child is subject to jurisdiction of the court and adjudge the child a dependent of the court if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child” A finding of jurisdiction under section 300, subdivision (b) requires ““(1) neglectful conduct by the parent in one

of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.” [Citation.]’ [Citations.] The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ [Citation.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.)

Relying on *In re David M.* (2005) 134 Cal.App.4th 822 (*David M.*), *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322 (*Jennifer A.*), and *In re Alexis E.* (2009) 171 Cal.App.4th 438 (*Alexis E.*), Ronald asserts that marijuana use in itself is not enough to support a finding of jurisdiction. Mother joins in this argument. The cases cited by Ronald are either distinguishable, however, or militate in favor of finding jurisdiction here. Moreover, both Ronald and Mother minimize the presence of other facts supporting jurisdiction in this case.

The appellate court in *David M.* held that evidence of the mother’s mental and substance abuse problems and the father’s mental problems was never tied to any actual harm or substantial risk of serious harm to the child, and therefore jurisdiction was unwarranted. (134 Cal.App.4th at p. 829.) Before the jurisdictional hearing in the case, the mother had tested negative for drugs approximately 18 times, and all missed tests were excused. (*Id.* at p. 830.) In *Jennifer A.*, the appellate court found that the evidence was insufficient to support a finding that return of children to the mother would create a substantial risk of detriment pursuant to section 366.22. (117 Cal.App.4th at p. 1345.) Mother had not been diagnosed as having a substance abuse problem, she had completed approximately 84 drug-free tests, and there was no evidence of a drug problem that affected her parenting skills. (*Id.* at pp. 1343, 1346.) On the other hand, in *Alexis E.*, while noting that “the mere use of marijuana by a parent will not support a finding of risk to minors,” the appellate court found that the risk to the minors at issue was *not* speculative, because the father had exposed them to the negative effects of secondhand marijuana smoke. (171 Cal.App.4th at p. 452.)

We find that substantial evidence supports the dependency court's finding of jurisdiction here. The trial court reasonably concluded that Mother's and Ronald's conduct created a substantial risk of serious physical harm to the children. Unlike in *David M. and Jennifer A.*, neither adult in this matter demonstrated a long-term commitment to maintaining sobriety. At the time of initial contact with DCFS in May 2011, both Mother and Ronald tested positive for marijuana. By the time of the June 2011 hearing, Mother had tested negative on two occasions, while Ronald's test results were not yet available. By August 2011, both had tested negative on four occasions. While the compliance they demonstrated by testing negative was commendable, the relatively short duration of their sobriety was not strong evidence that they were unlikely to start using drugs again. Further, the drug use posed a risk to the children. Ronald admitted that he and Mother had used marijuana while the children were asleep in their care. Moreover, Mother had recently used marijuana even though she was seven months pregnant in May 2011. "The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child." (§ 300.2.) Neither parent had demonstrated that they were capable of providing such a home.

The propriety of finding jurisdiction was not just dependent on the evidence of current circumstances, however, but also by how current conditions were affected by past circumstances. "[P]ast conduct may be probative of current conditions." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) In order for past conduct to be relevant in establishing a substantial risk of serious harm, there must be a reason to believe that the improper conduct will continue. (*Ibid.*) Here, there were valid reasons to believe the harmful behavior would continue. Mother admitted that she had a long-term crack cocaine addiction. Her five oldest children were declared dependent, and she failed to reunify with all of them. Three of her children, including Omarion, were born exposed to cocaine. Both Kobe and Omarion had previously been declared dependents of the court. Furthermore, even though Mother had completed a drug treatment program in connection with that earlier DCFS matter, she continued to smoke marijuana, testing positive in 2007

and 2011. For someone with such an intense history of drug abuse—with addiction problems that caused tremendous turmoil to her own life and significant harm to her children—any continued drug use, even of marijuana, was cause for great concern. Mother’s drug use had caused serious harm to her children and, if left unchecked, it was likely to do so again.

Ronald’s history was also relevant to the substantial risk of harm faced by the children. Ronald had a record of being incarcerated and numerous prior arrests. In 2008 alone, he was arrested three separate times for marijuana-related offenses, and he was sentenced to 32 months in prison for possession of marijuana for sale. Yet, when he was released, Ronald resumed smoking marijuana, testing positive for the drug. And, while living with the three children, Ronald continued to smoke marijuana with Mother, despite being aware of her devastating and dangerous history of drug addiction.

In light of these facts, the dependency court properly found jurisdiction pursuant to section 300, subdivision (b). “The state, having substantial interests in preventing the consequences caused by a perceived danger is not helpless to act until that danger has matured into certainty. Reasonable apprehension stands as an accepted basis for the exercise of state power.” (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1003.) The court’s decision to declare the children dependent, while allowing them to remain with Mother and Ronald, who were to continue drug testing, was a reasonable and appropriate solution to the troubling situation engendered by Mother’s and Ronald’s drug abuse.

DISPOSITION

The June 24, 2011 and August 9, 2011 orders are affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.